CF0000057778

(2)

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 377 of 1990

APPELLANTS : 1. Jagatram aged 48 years, son of Gopiram Rawat,
Accused (In jail)

2. Bhagatram aged 35 years, son of Gopiram Rawat,

3. Tukobai aged 30 years, wife of Paratram,

All residents of Masjidpara, Dharamjaigarh, P.S. and Tahsil Dharamjaigarh, District Raigarh (M.P.)

2133

Filed on Behalf of P.R. Bhowe Advocate 20-3-90

- versus -

RESPONDENT: The State of Madhya Pradesh through Station House Office, Police Station, Dharamjaigarh.

APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

(21)

AFR.

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.327/90

Jagatram and others

vs.

State of M.P.(C.G.)

ORAL - Judgment

Per Hon.R.S. Garg, J :

The appellants being aggrieved by the judgment dated 16-3-1990 passed in Sessions Trial No.118/89 by the learned First Addl.Judge to the Court of Sessions Judge, Raigarh convicting the appellants under Sections 498-A and 306 I.P.C./sentencing them to undergo R.I. for two years and five years respectively, have preferred this appeal.

2. The prosecution case in brief is that on 5-4-1989 the deceased had some dispute with her husband Abhay Ram(absconding accused), being aggrieved by the conduct of the husband she poured kerosene oil on herself and burnt. The prosecution further says that because of love marriage between the deceased Shakun Bai and Abhay Ram, the appellants were aggrieved and were harassing the deceased. As the deceased could not bear the burns, in the burning condition she came out of the house and fell in front of the house of one Vishram, said Vishram covered her with the blanket and thereafter the deceased was brought to the hospital. In thehospital, proper treatment was given to her and under the directions of the police a dying declaration (Ex.P/5-B) was recorded by P.W.4 S.K. Shriwas. In the said dying declaration, she

stated that the present appellants were harassing her, however, she further stated that her husband was treating her with cruelty, therefore, she burnt herself. On completion of the investigation, the ~~appellants~~ police filed the challan against the appellants and as they denied commission of the offence, they were put to trial. After recording the evidence and hearing the parties, the learned trial court convicted and sentenced the accused persons as referred to above, therefore, they have come to this Court.

3. Miss Singhai, learned counsel for the appellants, submits that conviction of the appellants under Section 498-A of I.P.C. is bad because Section 498-A in its logical interpretation can be applied to the husband and relations of the husband and as the present appellants are not the relations of the husband, they could not be convicted. After taking me through the statements of the witnesses, it is submitted that no any evidence has been brought on record to prove that the present appellants were harassing the deceased or abetted suicide. She submits that from the statements of P.W.8 Kishanlal, son of the deceased, P.W.9 Vishram and P.W.10 Devki Bai, it would appear that the appellants were not involved in any illegality or they never harassed the deceased.

4. Learned counsel for the State has opposed the arguments submitting that from the dying declaration, Ex.P/5-B, it would clearly appear that the appellants did harass the deceased and as a result of the said harassment she had committed suicide. He submits that the conviction of the appellants and the sentences awarded to them do not call for any interference.

5. I have heard the parties and have gone through the records.

6. Section 498-A of I.P.C. has been introduced in the Indian Penal Code under Chapter XX-A in the year 1983. Section 498-A of I.P.C. reads as under :

> "498-A. Husband or relative of husband of a woman subjecting her to cruelty-
>
> Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation- For the purposes of this section, "cruelty" means-
>
> (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

A simple perusal of Section 498-A would make it clear that the Section would be applicable to the husband or the relatives of the husband of a woman. When the husband or his relatives subject such woman to cruelty, then such persons may be punished and may be awarded sentence which may extend to three years. Such person shall also be liable to pay fine. The law in its wisdom had used the specific words and such words are to be interpreted taking into consideration the intention of the legislature. Section 498-A does not say that whenever any relation of a woman is treating such a woman with cruelty, then such person shall be held liable under Section 498-A. Section 498-A with its logical

interpretation would apply to the husband or the relatives of the husband and not to other persons. Undisputedly, the appellants are relations of the deceased woman(wife). Section 498-A certainly could not be applied in a case like present. On this short ground, the conviction and sentences awarded to the appellants under Section 498-A of I.P.C. are set-aside.

7. Section 306 I.P.C. says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

8. Section 107 I.P.C. defines abetment. It reads as under :

> "107. Abetment of a thing- A person abets the doing of a thing,who-
> First- Instigates any person to do that thing; or
> Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
> Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.
>
> Explanation-1- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose,voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.
>
> Explanation-2- Whoever,either prior to or at the time of the commission of an act,does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

A person abets the doing of a thing if he instigates any person to do that thing or after engaging himself with

one or more person in conspiracy for the doing of that ~~thing~~ act, intentionally aids by any act or illegal omission the doing of the said thing. Unless the ingredients constituting an offence under Sec. 107 IPC are not available in an ordinary matter a person cannot be convicted under Section 109 I.P.C.. Section 109 provides that whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. For constituting an offence of abetment, the prosecution is obliged to prove that the accused instigated somebody to do something or engaged his ownself with one ~~or~~ or more person in some conspiracy for doing something illegal or omitting to do something which he was required to do or if the accused intentionally aids by any act or illegal omission the doing of said thing.

9. For securing a conviction under Section 306 IPC, the prosecution would be obliged to prove that the accused persons either instigated the deceased to commit suicide or they engaged themselves in a conspiracy or engaged themselves with one or more other person or persons in a conspiracy for doing something or the accused persons intentionally aided by any act or illegal omission the doing of that thing.

10. In the present matter, the learned trial court, after going through the statements of the witnesses, has recorded a positive finding in favour of the accused persons that in the statements of P.W.8 Kishan, P.W.9 Vishram and P.W.10 Devki Bai the prosecution failed in

bring in any evidence on record against the accused persons.

11. Though the finding has been recorded in favour of the accused persons but the learned court below did not care to see the said statements properly. P.W.8 Kishan Lal, the son of the deceased, in paragraph 2 of his statements, in reply to the ~~leading~~ suggestion given by the Public Prosecutor stated that he did not know that on the date of the incident the husband of the deceased ~~a~~ beat the deceased, the deceased poured kerosene oil on herself and thereafter ~~she~~ burnt herself. In paragraph 3 in reply to the leading questions, the witness said that he did not know that on the date of the incident the husband of the deceased demanded a sum of Rs.50/-. The witness however stated that the father and mother were generally engaged in some fight and the mother generally was unhappy. The trend of the leading questions put by the Public Prosecutor would show that the prosecution came out with the case that on the date of the incident the deceased had some fight with her husband, being unhappy and sorrowed on that account she poured kerosene oil on herself and burnt. Even on the leading questions, not even a single question was put nor a suggestion was given to the witness that the present appellants also harassed the deceased with cruelty. In paragraph 4, the witness had stated that the accused were not coming to their house, the accused had no fight with his mother, he rather stated that his father and mother generally used to fight after consuming liquor. From the statements of this witness, it would simply appear that on or before the date of the incident the deceased had no ~~such~~ fight with the present applicants.

12. P.W.9 Vishram who admittedly was available on the spot had stated that accused persons never had any fight with the deceased. He also stated that deceased Shakuntala never informed him that she had some fight with the present appellants. In paragraph 6, he stated that Shakun Bai and her husband Abhayram after consuming liquor use to fight with each other. P.W.10 Devki Bai did not speak even a single word against the accused persons, rather she stated that the accused were not coming to the house of the deceased.

13. From the statements of these three witnesses, it would simply appear that the accused persons were not coming to the house of the deceased, they had no fight with the deceased, nobody saw them fighting with the deceased nor the deceased ever reported to anybody that the appellants fought with her. The evidence on the other hand is that the deceased use to fight or quarrel with her husband, the leading questions put by the prosecution would show that on the date of the incident the husband of the deceased demanded a sum of Rs.50/-, on which the deceased and her husband had some fight and ultimately the deceased committed suicide.

14. True it is that in the dying declaration the deceased had stated that the present appellants were harassing her. It is also true that dying declarations, unless there are circumstances or reasons to disbelieve the same, are accepted to be correct. In a case where the prosecution wants to succeed on the strength of the dying declaration, it also has to bring on record the attending circumstances. In absence of any evidence to say, show or suggest that the present appellants treated

the deceased with cruelty or did something to abet her to commit suicide, it would not be possible to hold that they in fact abetted her to commit suicide. In the matter of Mahendra Singh and another vs. State of M.P., reported in 1996 Cr.L.R.(SC) 15, the Supreme Court while considering a matter where the accused persons were convicted under Section 306 IPC had to deal a matter like present. The dying declaration in the said case was as under :

> "My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

The Supreme Court observed that in a case where such a dying declaration is available, the dying declaration, per se, could not involve the appellants in offence punishable under Section 306 IPC, because it provides for abetment of suicide. Referring to Section 107, Their Lordships observed that unless the ingredients of abetment are available on the record, it would not be possible to hold that the accused persons in fact abetted the commission of offence. While acquitting the accused persons, the Supreme Court observed that neither of the ingredients of the abetment were attracted on the statements of the deceased.

15. In the present case, the deceased simply said that her maternal aunt (mother's sister) and maternal uncles (mother's brothers) harassed her, therefore, she committed suicide. Unfortunately, barring these words that they harassed her she did not say anything nor anything is available on the record to show that the appellants did anything to abet the commission of suicide. A dying

declaration, is not always binding. A Court has to look into the nature of the dying declaration, its reliability and has also to see that whether such dying declaration needs some corroboration or not.

16. Section 32 of ~~Indian~~ Indian Evidence Act says that statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the cases well mentioned in Section 32. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

17. Section 32 of Indian Evidence Act does not say that a statement made by a person in relation to cause of his death would be conclusive proof or would be deemed to be a gospel truth. It says that such statements would be relevant. Such relevant statements are to be accepted if there are attending circumstances. In absence of the circumstances which could connect the accused persons with the alleged crime, so also in a case where no motive has been attributed against such persons but simple allegations of harassment have been

made against them, it would not be possible for a Court to rely upon such statements and record conviction.

18. The court below, in the opinion of this Court, in absence of the material evidence was not justified in convicting the appellants under Section 306 I.P.C..

19. In accordance with the findings recorded above, the appeal is allowed. The conviction and sentences are set-aside. The appellants appear to be on bail. Their bail bonds are discharged.

Sd/-
R.S. Garg
Judge

25-9-2001.

H/-
(1+2)